

OCT 2 2 17 PM '95

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 94-64

In the Matter of

Amendment of Section 73.202(b), RM-8453
Table of Allotments,
FM Broadcast Stations.
(Idler, Alabama)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: September 22, 1995; Released: September 29, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 9 FCC Rcd 3049 (1994), issued in response to a petition for rule making filed on behalf of Deborah M. Thompson ("petitioner") proposing the allotment of FM Channel 254A to Ider, Alabama, as that community's first local aural transmission service. Petitioner filed supporting comments.¹ Supporting comments were also filed by Sand Mountain Advertising Co., Inc. ("Sand Mountain"). Opposing comments were filed on behalf of KEA Radio, Inc. ("KEA"), licensee of Station WKEA-FM, Channel 252A, Scottsboro, Alabama, and Station WMXN(FM),² Channel 269A, Stevenson, Alabama. Comments and a counterproposal were filed by Leeta M. McDougald ("McDougald").³ Petitioner

¹ As discussed infra, petitioner subsequently withdrew her interest in the proposed allotment of Channel 254A to Ider, Alabama, supporting instead McDougald's counterproposal to allot Channel 254A to Lookout Mountain, Georgia.

² Formerly Station WKZA(FM).

³ McDougald counterproposed the allotment of FM Channel 254A to Lookout Mountain, Georgia, as that locality's first local aural broadcast service. Although the counterproposal was signed by McDougald, it was not verified, as required by Section 1.52 of the Commission's Rules. McDougald subsequently submitted a properly executed statement confirming and verifying the

filed reply comments.⁴ Joint

information contained in the counterproposal in an effort to cure the noted procedural deficiency. We admonish McDougald for her initial failure to comply with Section 1.52 of our Rules. While we may not waive the verification requirement of our rule, see Belo Broadcasting Corp., 39 RR 2d 899, 901 n.4 (1977), we will accept McDougald's late filed cure pursuant to the provisions of Section 1.52 of the Rules. See Canton, et al., Illinois, 3 FCC Rcd 5824 (1988).

McDougald's counterproposal is technically defective and therefore was not placed on public notice. McDougald's engineering statement asserts that from a site located 22.5 kilometers (14 miles) southwest of Lookout Mountain at reference coordinates 34-51-16 and 85-33-14, a 70 dBu signal could be provided over the community in conformity with the requirements of Section 73.315 of the Commission's Rules. However, as demonstrated in WLBI and WBAM's engineering exhibits, intervening terrain obstructions between the reference point specified by McDougald for Channel 254A and the proposed community of Lookout Mountain preclude compliance with Section 73.315 of the Commission's Rules. According to WLBI and WBAM, an antenna tower of 2,000 feet above ground level would be necessary to achieve line of sight to Lookout Mountain from a non-short spaced site. Further, WLBI and WBAM assert that not only would such a tall tower be cost prohibitive for a Class A facility, but it is unlikely to obtain FAA or local zoning approval.

A terrain profile analysis performed by our engineering staff confirms that a city grade signal could not be provided to Lookout Mountain on Channel 254A from the site proposed by McDougald due to an intervening major terrain obstruction. As McDougald did not demonstrate the presence of a particular site that could provide line of sight service to Lookout Mountain, the proposal contravenes the requirements of Section 73.315 of the Commission's Rules and must be rejected. See Creswell, Oregon, 3 FCC Rcd 4608 (1988), recon. denied, 4 FCC Rcd 7040 (1989) (an allotment will not be made in the absence of a reasonable assurance that a suitable site area exists from which a station could operate in accordance with the Commission's Rules).

⁴ Petitioner withdrew her support for the proposed allotment of Channel 254A to Ider, Alabama. Although the withdrawal was not filed in compliance with the provisions of Section 1.420(j) of the Commission's Rules, in light of the ultimate disposition of this proceeding, we will excuse the petitioner's infraction in this instance. However, our determination here should not be construed as a relaxation of the Commission's Rules requiring a withdrawing party to an allotment proceeding to provide a copy of any written

reply comments were filed on behalf of North Jefferson Broadcasting Company, Inc., licensee of Station WLBI(FM), Channel 254C3, Warrior, Alabama, and Deep South Broadcasting Company, Inc., licensee of Station WBAM(FM), Channel 255C, Montgomery, Alabama, (hereinafter referred to as "WLBI and WBAM").

2. KEA, WLBI and WBAM all oppose the proposal to allot Channel 254A to Ider, based upon the inability of Channel 254A to provide a 70 dBu signal over the entire principal community from any fully-spaced transmitter site due to terrain factors. According to documented engineering provided by the opposing parties, from the proposed reference coordinates the 70 dBu service radius extends approximately 9 kilometers in the direction of Ider, which is short of the 13 kilometer distance to Ider from the restricted site. Therefore, the opponents urge that the Ider proposal is technically deficient and should be denied.

3. A staff engineering study of the Ider proposal reveals that based upon an average terrain elevation of 397.2 meters at the proposed reference site, use of Class A facilities would place the radiation center of the antenna for Channel 254A at 497.2 meters above mean sea level (AMSL). According to our studies, the center city of Ider is located 13.0 kilometers on a bearing of 213.7° from the referenced site. Assuming an antenna radiation center AMSL of 497.2 meters, the height above average terrain on that radial is only 47.9 meters. Employing Class A facilities at 47.9 meters HAAT would result in the provision of a 70 dBu signal a distance of 11.25 kilometers. Thus, from the referenced site the requirements of Section 73.315 of the Commission's Rules could not be met and therefore, the proposal to allot Channel 254A to Ider, Alabama must be denied. See Greenwood, South Carolina, et al., 3 FCC Rcd 4108 (1988).

4. In view of the above, IT IS ORDERED, That the petition of Deborah M. Thompson (RM-8453), as supported by Sand Mountain Advertising Company, Inc., to allot FM Channel 254A to Ider, Alabama, IS DENIED.

5. IT IS FURTHER ORDERED, That this

agreement or affidavit setting forth the particulars of the withdrawal as specified in Section 1.420(j).

proceeding IS TERMINATED.

6. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau